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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

JIN-PYONG PETER YIM,

Plaintiff,

v.

NATIONAL INSTITUTES OF HEALTH,

Defendant.

HON. ZAHID N. QURAISHI

Civil Action No.

3:21-CV-07031-ZNQ-LHG

**DEFENDANT'S STATEMENT OF MATERIAL FACTS
PURSUANT TO LOCAL RULE 56.1 IN SUPPORT OF
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

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On the Brief:

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LOCAL RULE 56.1 STATEMENT

Pursuant to Local Civil Rule 56.1, Defendant the National Institutes of Health (“NIH”) hereby identifies the following facts which are not reasonably subject to material dispute for purpose of this summary judgment motion:¹

1. On or about January 28, 2021, *pro se* plaintiff Jin-Pyong Peter Yim (“Plaintiff” or “Yim”) requested documents from the National Institutes of Health (“NIH”) under the Freedom of Information Act (“FOIA”). *See* Declaration of Gorka Garcia-Malene (“Garcia-Malene Decl.”) ¶ 9.
2. In particular, Yim sought records relating to “All updates to the Coronavirus Disease 2019 (COVID-19) Treatment Guidelines that were endorsed by a vote of the Panel (Date Range for Record Search: from 01/01/2021 to 01/28/21)”. *Id.*
3. On March 7, 2021, Yim requested information regarding the estimated date of completion for FOIA Request No. 55822. *Id.* ¶ 11.
4. The next day, on March 8, 2021, the NIH informed Plaintiff that his request “was being processed and is in the queue behind all other requests ahead of yours” following Health and Human Services FOIA “first-in, first-out” guidelines. *Id.* ¶ 11.
5. On March 31, 2021, Yim filed suit against the NIH in the United States District Court, District of New Jersey. *Id.* ¶ 12; *see also* ECF No. 1.
6. On April 23, 2021, NIH finalized its search for the requested records, and determined that they had been posted for public inspection on the NIH official government website. *See* Garcia-Malene Decl. ¶ 13.
7. That same day, NIH sent the Plaintiff the link to access all responsive documents. *Id.*
8. On May 3, 2021, the Government contacted Yim via email about his satisfied FOIA request. *See* ECF No. 16, Exhibits B, B-1 & C.

¹ This Statement of Material Facts will cite to certain ECF docket entries and the Declaration of Gorka Garcia-Malene filed with the Memorandum of Law in Support of Defendant’s Motion for Summary Judgement.

9. Yim replied via email on May 4, 2021, and stated, “NIH must confirm that the record I requested does not exist.” *Id.*
10. The Government replied on May 5, 2021, and informed Yim that the information he requested did in fact exist and, as the NIH FOIA response dated April 23, 2021 indicated, all updates to the Coronavirus Disease 2019 (COVID-19) Treatment Guidelines are publicly available on NIH’s website. *See* Garcia-Malene Decl. ¶ 14; *see also* ECF No. 16-3,4 &5 (Exhibits B, B-1 & C).
11. In addition, the Government attached in the email a direct link to the information as follows: “Please be advised that the information you are requesting is **publicly available**. For your convenience, I provide below a more direct link to the information. The link is <https://www.covid19treatmentguidelines.nih.gov/whats-new/>. Down along the left hand side of the page is a link to the guidelines archive where all previous versions reside <https://www.covid19treatmentguidelines.nih.gov/archive/>.” *Id.*
12. On May 5, 2021, Yim responded via email and stated, “NIH’s response is not acceptable. I insist that NIH confirm that the record that I requested does not exist.” *Id.* ¶ 14.
13. On May 6, 2021, the Government replied again stating that the records he requested do in fact exist and that the search conducted by the NIH FOIA office revealed that the records were made public and are posted on the NIH’s website. *Id.*
14. The Government informed Yim that if he was unable to access the NIH web page or needed assistance with printing the information, the NIH would assist him by supplying a printed copy of the publicly available information from the NIH web page. *Id.*
15. The Government also informed Yim that it would make every reasonable effort to provide him with the responsive records. *Id.*

16. Yim declined to respond further to the Government stating, “I remain convinced that my case against NIH is strong. I would like to discontinue this discussion.” *Id.*
17. On May 7, 2021, the Government sent a letter to the Court requesting an expedited status conference in order to determine if the NIH had supplied plaintiff with the responsive documents thereby mooting the matter. That request was denied. *Id.* ¶ 15; *see also* ECF Nos. 5, 6 & 7.
18. On August 26, 2021, following a status conference with the Court held on August 25, 2021, the Government contacted Yim via email asking him to supply the exact web link he would like the NIH to certify as the responsive record to his FOIA request. *Id.* ¶ 16.
19. On August 26, 2021, Yim supplied the Government with the exact link he wanted certified:
<https://files.covid19treatmentguidelines.nih.gov/guidelines/archives/statements-on-ivermectin-01-14-2021.pdf>. *See* Garcia-Malene Decl. ¶ 16; *see also* ECF No. 16-11.
20. Yim also stated on August 26, 2021, via email, that he was “open” to one of three “proposed settlements” and lists “Proposed settlement 1(Yim): The NIH responds to the FIOA request with a link to the specific responsive record. The NIH might provide the ivermectin-recommendation link listed above. If a responsive record does not exist, the NIH will state so.” *See* ECF No. 16-11.
21. On August 27, 2021, the NIH responded via email stating, “Please be advised that the link you supplied, to wit,
<https://files.covid19treatmentguidelines.nih.gov/guidelines/archives/statements-on-ivermectin-01-14-2021.pdf> is a valid NIH link that directs you to the document responsive to your FOIA request (#55822).” *Id.*
22. On August 27, 2021 Yim replied, via email, that he wanted that statement reflected in a “formal NIH FOIA response letter.” *Id.*; *see also*, ECF No. 16, Exhibit I.

23. Later that day, on August 27, 2021, the Government responded to Yim's new demand and requested that he supply the exact language he needed in the letter in order to satisfy him. *See* Garcia-Malene Decl. ¶ 16.
24. On August 27, 2021, Yim replied, "The language from your previous email is fine. I am interested to know if an NIH employee is willing to sign the letter." *Id.*; *see also* ECF No. 16, Exhibit I.
25. On September 1, 2021, via email at 11:26 am, NIH supplied Yim with a second NIH response letter dated August 31, 2021, signed by NIH FOIA Officer Gorka Garcia- Malene, with the exact wording he requested. *See* ECF. 16-16 (Exhibit K-1); *see also* Garcia-Malene Decl. ¶ 16.
26. On September 2, 2021, after receiving the new, signed FOIA response letter from the NIH, Yim filed a "status update" letter with the Honorable Zahid Quraishi claiming, "I responded in an email on August 27 that I will accept that statement as the NIH FOIA response provided that an employee of the NIH signs a document with that statement. The Defendant has not agreed to that offer." *See* ECF No. 14.

Dated: Newark, New Jersey
September 24, 2021

Respectfully submitted,

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By: *s/ Margaret Ann Mahoney*
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